

1 PETER H. CUTTITTA – SBN 3050  
2 Email: [cuttitta@portersimon.com](mailto:cuttitta@portersimon.com)  
3 BRIAN HANLEY – SBN 9052  
4 Email: [hanley@portersimon.com](mailto:hanley@portersimon.com)  
5 PORTER SIMON  
6 Professional Corporation  
7 675 Sierra Rose Dr., Suite 116  
8 Reno, NV 89511  
9 Telephone: (775) 322-6767  
10 Facsimile: (530) 587-1316  
11  
12 CHARLES N. FREIBERG – Admitted *Pro Hac Vice*  
13 Email: [cfreiberg@kasowitz.com](mailto:cfreiberg@kasowitz.com)  
14 BRIAN P. BROSNAHAN – Admitted *Pro Hac Vice*  
15 Email: [bbrosnahan@kasowitz.com](mailto:bbrosnahan@kasowitz.com)  
16 DAVID A. THOMAS – Admitted *Pro Hac Vice*  
17 Email: [dthomas@kasowitz.com](mailto:dthomas@kasowitz.com)  
18 JACOB N. FOSTER – Admitted *Pro Hac Vice*  
19 Email: [jfoster@kasowitz.com](mailto:jfoster@kasowitz.com)  
20 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
21 101 California Street, Suite 2300  
22 San Francisco, CA 94111  
23 Telephone: (415) 421-6140  
24 Facsimile: (415) 398-5030  
25  
26 Attorneys for Plaintiffs  
27 SUSAN K. MYERS, MICHAEL F. MYERS  
28 and KEITH J. GOTTL

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEVADA**

SUSAN K. MYERS, individually and as  
trustee of the Susan K. Myers Living Trust  
dated January 8, 2001, MICHAEL F.  
MYERS, individually and as trustee of the  
Susan Myers Massachusetts Trust, dated July  
11, 2008, and KEITH J. GOTTL, as trustee of  
the Michael F. Myers Massachusetts Trust,  
dated October 23, 2008, and the Michael F.  
Myers Massachusetts Trust, dated December  
3, 2008,

Plaintiffs,

v.

JAMES ARCHIBALD and PORT CAPITAL  
MANAGEMENT LLC, a limited liability  
company,

Defendants.

**Case No: 3:10-cv-258-RCJ-RAM**

**STIPULATION AND ORDER  
RE DISCLOSURE OF CERTAIN  
CONFIDENTIAL ATTORNEY-CLIENT  
COMMUNICATIONS BETWEEN THE  
MYERSES AND THE OSHINS FIRM**

1           WHEREAS, plaintiff Susan K. Myers (“Susan”) and plaintiff Michael F. Myers  
 2 (“Michael”) (together, the “Myerses”) retained the law firm of Oshins & Associates, LLC (the  
 3 “Oshins Firm”) from in or about August 2008 to in or about August 2010 to provide legal advice  
 4 and other services regarding matters of trust law, and the Myerses received professional services  
 5 from the Oshins Firm, including attorneys Steven J. Oshins, Esq., and Catherine M. Colombo,  
 6 Esq., at times within that time period,

7           WHEREAS, defendants James Archibald and Port Capital Management LLC (together,  
 8 “Defendants”) have sought production of documents and information in this action that include  
 9 confidential attorney-client communications between the Myerses (or Susan or Michael  
 10 individually) and the Oshins Firm and attorney work product by the Oshins Firm in connection  
 11 with its engagement with the Myerses,

12           WHEREAS, the Myerses contend that such communications and attorney work product  
 13 are absolutely privileged or protected from production or disclosure to Defendants based on the  
 14 attorney-client privilege and/or the attorney work product doctrine,

15           WHEREAS, Defendants dispute the Myerses’ assertion of the attorney-client privilege  
 16 and/or the attorney work product doctrine with regard to these communications and work product,  
 17 contending that such documents and information must be produced and disclosed under applicable  
 18 law in light of the nature of the Myerses’ claims against Defendants in this action,

19           WHEREAS, the Myerses dispute the grounds advanced by Defendants for their asserted  
 20 entitlement to receive such documents and information,

21           WHEREAS, in the interests of compromise and to avoid unduly burdening the parties and  
 22 the Court with motion practice related to this dispute, the parties to this action — the Myerses and  
 23 plaintiff Keith J. Gott (collectively, “Plaintiffs”) and Defendants — hereby stipulate, and the Court  
 24 orders, as follows:

25           1.       Plaintiffs will produce, to the extent responsive to any valid requests for production  
 26 of documents or other discovery devices and subject to any objections other than those based on  
 27 the attorney-client privilege, documents and information reflecting matters that were actually  
 28 communicated between the Myerses (or Susan or Michael individually) and the Oshins Firm, but

1 only with respect to such communications that (a) Plaintiffs intend to use to support any claim in  
2 this case and/or (b) relate to the Myerse's understanding of the insurance policies at issue in this  
3 case and/or the premium financing transactions at issue in this case (including communications  
4 that relate to any plans by the Myerse's for preservation or disposition of the assets in their estates  
5 and the need for life insurance or other such investment as part of such plans, but only to the  
6 extent such information may bear upon the benefits and drawbacks of pursuing or maintaining the  
7 premium-financed life insurance transactions at issue or accomplishing the ostensible purposes of  
8 those transactions).

9       2. The Myerse's will not produce or disclose attorney-client communications that  
10 relate to matters that are independent of or merely ancillary to the policies or the premium  
11 financing transactions, including, without limitation, the Myerse's efforts to address and correct  
12 concerns about the terms of the Massachusetts trust documents or the structuring of the  
13 Massachusetts trusts or the Myerse's consideration of the bond financing transaction through The  
14 Frazier Lanier Company, Inc. that Mr. Archibald proposed to the Myerse's but the Myerse's never  
15 completed. The Myerse's also will not disclose any confidential attorney-client communications or  
16 attorney work product on the part of the Oshins Firm that was not conveyed to them prior to the  
17 commencement of this action.

18       3. The Myerse's production or disclosure of documents or information in this action  
19 pursuant to paragraph 1 above shall not waive or otherwise prejudice any rights the Myerse's may  
20 have to assert in this action the attorney-client privilege or attorney work product doctrine as a  
21 defense to production or disclosure of any other documents or information not produced or  
22 disclosed in this action, nor shall anything contained herein waive or otherwise prejudice any right  
23 Defendants have to seek production of additional information.

24       4. The Myerse's production or disclosure of documents or information in this action  
25 pursuant to paragraph 1 above shall not waive or otherwise prejudice any rights the Myerse's may  
26 have to assert in any other action, arbitration, or proceeding the attorney-client privilege or  
27 attorney work product doctrine as a defense to production or disclosure of the documents or  
28 information so produced or disclosed in this action, or as a defense to production or disclosure of

1 any other documents or information not produced or disclosed in this action, nor shall anything  
2 contained herein waive or otherwise prejudice any right Defendants have to seek production of  
3 additional information.

4 5. This Order shall be binding on the parties stipulating hereto and any parties who  
5 may be added to this action.

6 6. Any party receiving any documents or information produced pursuant to paragraph  
7 1 above shall not make public such documents or information and may not use them for any  
8 purpose other than discovery and other trial preparation, motion practice, trial, writs or appeals in  
9 this action. Such party may use and disclose such documents or information solely as provided by  
10 any applicable Protective Order the Court may enter in this action.

11 DATED: May 18, 2011 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
12

13 By: /s/ Charles N. Freiberg  
14 Charles N. Freiberg (Admitted *Pro Hac Vice*)  
101 California Street, Suite 2300  
15 San Francisco, CA 94111

16 Attorneys for Plaintiffs  
17 Susan K. Myers, Michael F. Myers, and Keith J. Gott  
18

19 DATED: May 18, 2011 BOWDITCH & DEWEY LLP  
20

21 By: /s/ Louis M. Ciavarra  
22 Louis M. Ciavarra (Admitted *Pro Hac Vice*)  
311 Main Street  
23 Worcester, MA 01608

24 Attorneys for Defendants  
25 James Archibald and Port Capital Management LLC  
26

27 Pursuant to the parties' stipulation, and good cause appearing,  
28

**IT IS SO ORDERED.**

Dated: May 19, 2011

  
29 Honorable Robert A. McQuaid, Jr.  
30 United States Magistrate Judge

1 PETER H. CUTTITTA – SBN 3050  
2 Email: [cuttitta@portersimon.com](mailto:cuttitta@portersimon.com)  
3 BRIAN HANLEY – SBN 9052  
4 Email: [hanley@portersimon.com](mailto:hanley@portersimon.com)  
5 PORTER SIMON  
6 Professional Corporation  
7 675 Sierra Rose Dr., Suite 116  
8 Reno, NV 89511  
9 Telephone: (775) 322-6767  
10 Facsimile: (530) 587-1316  
11  
12 CHARLES N. FREIBERG – Admitted *Pro Hac Vice*  
13 Email: [cfreiberg@kasowitz.com](mailto:cfreiberg@kasowitz.com)  
14 BRIAN P. BROSNAHAN – Admitted *Pro Hac Vice*  
15 Email: [bbrosnahan@kasowitz.com](mailto:bbrosnahan@kasowitz.com)  
16 DAVID A. THOMAS – Admitted *Pro Hac Vice*  
17 Email: [dthomas@kasowitz.com](mailto:dthomas@kasowitz.com)  
18 JACOB N. FOSTER – Admitted *Pro Hac Vice*  
19 Email: [jfoster@kasowitz.com](mailto:jfoster@kasowitz.com)  
20 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
21 101 California Street, Suite 2300  
22 San Francisco, CA 94111  
23 Telephone: (415) 421-6140  
24 Facsimile: (415) 398-5030  
25  
26 Attorneys for Plaintiffs  
27 SUSAN K. MYERS, MICHAEL F. MYERS  
28 and KEITH J. GOTTL

15  
16 **UNITED STATES DISTRICT COURT**  
17

18 **FOR THE DISTRICT OF NEVADA**  
19

20 SUSAN K. MYERS, individually and as  
21 trustee of the Susan K. Myers Living Trust  
22 dated January 8, 2001, MICHAEL F.  
23 MYERS, individually and as trustee of the  
24 Susan Myers Massachusetts Trust, dated July  
25 11, 2008, and KEITH J. GOTTL, as trustee of  
26 the Michael F. Myers Massachusetts Trust,  
27 dated October 23, 2008, and the Michael F.  
28 Myers Massachusetts Trust, dated December  
3, 2008,

Plaintiffs,

v.

JAMES ARCHIBALD and PORT CAPITAL  
MANAGEMENT LLC, a limited liability  
company,

Defendants.

**Case No: 3:10-cv-258-RCJ-RAM**

**CERTIFICATE OF SERVICE**

## **CERTIFICATE OF SERVICE**

I, JANE SULLIVAN, declare that I am a citizen of the United States and I am over 18 years of age. I am not a party to the above entitled action. My business address is 101 California Street, Suite 2300, San Francisco, California 94111.

On May 18, 2011, I caused the attached document entitled:

**STIPULATION AND [PROPOSED] ORDER RE DISCLOSURE OF CERTAIN  
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS BETWEEN THE  
MYERSES AND THE OSHINS FIRM**

to be sent to the following:

Louis M. Ciavarra, Esq.  
AiVi Nguyen, Esq.  
Bowditch & Dewey, LLP  
311 Main Street  
P.O. Box 15156  
Worcester, MA 01615-0156

Email: lciavarra@bowditch.com  
Email: anguyen@bowditch.com  
Tel. No.: 508-926-3408  
Fax No.: 508-929-3011

Attorneys for Defendants JAMES ARCHIBALD and PORT CAPITAL MANAGEMENT, LLC

Stephen C. Balkenbush, Esq.  
THORNDAL, ARMSTRONG, DELK,  
BALKENBUSH & EISINGER  
6590 S. McCarran, Suite B  
Reno, NV 89509

Email: [sbalkenbush@thorndal.com](mailto:sbalkenbush@thorndal.com)  
Telephone: (775) 786-2882  
Facsimile: (775) 786-8004

Attorneys for Defendants JAMES ARCHIBALD and PORT CAPITAL MANAGEMENT, LLC

**By Electronic Service (LR 5-3).** I caused the above-documents to be electronically filed on this date with the clerk of the Court using the CM/ECF system, which will automatically e-serve the same on the attorneys of record indicated on the generated Notice of Electronic Filing and served as follows any attorneys of record which are designated on the Clerk's Service List(\*) to require alternate service as follows:

**By Mail.** I placed the above-documents in sealed envelope(s), with postage thereon fully prepaid, for collection and mailing at San Francisco, California, following ordinary business practices. I am readily familiar with the practices of Kasowitz, Benson, Torres and Friedman for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

**By Federal Express.** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by Federal Express to receive documents, in an envelope or

1 package designated by Federal Express.

2 **By Personal Service.** I caused the above documents to be delivered by hand to the addressee(s)  
3 noted above.

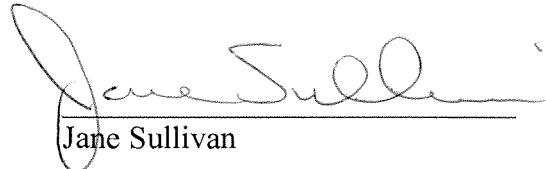
4 **By Facsimile.** I caused the above documents to be served via facsimile electronic equipment  
5 transmission to the number indicated after the address(es) noted above.

6 **By Email.** I caused the above documents to be served via email transmission to the e-mail  
7 addresses noted above.

8 I declare under penalty of perjury that the foregoing is true and correct.

9  
10 Executed on May 18, 2011 at San Francisco, California.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



Jane Sullivan